IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.731 OF 2005

Group Captain H.Kaushal ...Petitioner

Versus

Mrs.Nalini Mehra & Anr. ...Respondents

.....

Mr.J.S.Kini for Petitioner.

None for Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

APRIL 12, 2005.

P.C.

1. The Application for re-examination of witness No.1 for defence/accused has been rejected by the Trail Court mainly relying on the fact that when the relevant documents were tendered during the course of cross-examination, no adjournment was sought on behalf of the Complainant on the ground that they would like to study the said documents. That is a fact noted in the order dated 30th August

2004.

2. If that fact is correct, the conclusion reached by the lower Court that no indulgence be shown to such Complainant, cannot be doubted, as that would result in allowing the Complainant to plug loop holes or fill-in the lacuna in the evidence.

3. To get over this position, Counsel for the Petitioner relies on averments in Clause (d) at page 8 of the Memo of the Petition that the Petitioner had in fact made oral request for adjournment, which was, however, rejected by the Trial Court at the relevant time.

4. Insofar as this Court is concerned, it will be bound by the fact stated in the record of the Court as can be discerned from the order dated 30th August 2004. If there is any controversy regarding correctness of that fact, the only course open to the Petitioner is to move the same Judge by way of appropriate application, as is expounded in the decision of the Apex Court in the case of

R.S.Nayak vs. A.R.Antulay reported in AIR 1982 SC 1249.

4. Counsel for the Petitioner prays that the Petitioner be granted liberty to approach the Trial Judge for this purpose.

5. This Application is dismissed as withdrawn with liberty as prayed.

A.M.KHANWILKAR, J.